has not yet succeeded "in leasing the land from the landlord" — to use the language of the document.

The appellant also relied on the fact that he and his predecessor in title had paid certain assessment rates. Receipts were produced for the years 1925 and 1961, but, as the judge points out, these relate only to the premises described as 3-1 Boon Teck Road, where the tenant lived, and do not necessarily include any of the disputed land. There is therefore no need to consider the somewhat doubtful proposition that mere payment of rates by the former owner would suffice to displace such acts of possession as fencing in the land and using it for business purposes, adversely to the title of the true owner.

The slight evidence of the gathering of coconuts on the disputed land by the appellant's tenant could not be accepted by the judge for the reason that the principal witness on this point, the tenant himself, was so old as to be completely unreliable. The record of this witness' evidence completely bears out the judge's conclusions as to his reliability.

It is true that the judge also stated that neither side impressed him by its evidence. In the context in which that statement has been made, I conclude that the judge is referring to the evidence as to what part of the land was occupied by respondent. For he continues that "the truth lies halfway between the two stories" and then proceeds to discuss where the boundary line should fall. It is clear from the next paragraph of his judgment that he does accept the evidence of respondent and his witnesses as to the use to which respondent put the land and it is equally clear from the additional grounds that he accepted the evidence that respondent caused a fence to be erected.

I can see no reason for interfering with the judge's conclusions and findings on the evidence. It follows that those grounds of appeal relating to the facts cannot succeed.

There was no dispute as to the law applicable. For the appellant, reference was made to authorities which it was submitted, showed that the nature of the property must be taken into account. Those authorities were *Leigh* v. *Jack*,[1] *William Brothers Direct Supply Ltd.* v. *Raftery*,[2] and *Littledale* v. *Liverpool College*.[3] These were all cases in which the person claiming adverse possession had, by conveyance or lease, obtained possession of adjoining land and had made certain use of the disputed land. In each case, it was held that the acts of the claimant were not such as to dispossess the legal owners in the circumstances, which, of course, included the nature of the property and the use to which the disputed land was intended to be put. The basis of these cases is that the acts of the intruder may be equivocal because of the manner in which he used the disputed land or because he may have been merely exercising rights he already possessed. For that reason, it may not be reasonable to find that the intruder has in fact dispossessed the true owner.

This reasoning has no application to the present case. There can be nothing equivocal about the conduct of a stranger going on to land as a trespasser and performing acts adverse to the possession and title of the true owner to such an extent as to deprive the true owner entirely of possession, or entry, or use. For that is the effect of the act of the respondent in erecting a zinc fence round the land and barring access by means of a locked gate. There can be no need to consider the nature of the property if the acts of a complete stranger are such as to place himself in exclusive possession and deprive the owner of all use of his land.

It follows that this appeal cannot succeed on any questions of law that have been raised.

I would dismiss this appeal with costs to the respondent.

Tan Ah Tah F.J.: I agree that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Braddell Bros.; de Souza & de Souza.*

BUJANG JOHNY v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.C.) October 26, 1964]

[Sibu — Criminal Appeal No. CA/13 of 1964]

Criminal Procedure — Conviction on separate charges — Manner of sentencing.

Forests Ordinance (Sarawak Cap. 126), ss. 21(c) & (e) and 79 — Convictions — Sentence — Jurisdiction.

The appellant was charged with two offences under section 21(c) and (e)* of the Forests Ordinance. He was convicted on these charges on his own plea and the magistrate in passing sentence merely stated that he sentenced the appellants tc 4 weeks' imprisonment. On appeal against sentence,

Held: (1) the sentence of 4 weeks was appropriate in view of the large number of trees cut down in an area reserved for research;

(2) it was wrong for the magistrate not to pass separate sentence on each charge;

*Section 21(c) and (e) of the Forest Ordinance reads:

"21. Subject to the provisions of section 23, no person shall in a forest reserve —

.....

(c) fell, cut, ring, mark, lop or tap any tree, or injure by fire or otherwise any tree or timber;

.....

(e) quarry stone, burn lime or charcoal or search for, collect or remove any forest produce or minerals."

(3) the magistrate should indicate whether the sentences were to run concurrently or not.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

Idris (Inspector of Police) for the Public Prosecutor.

Lee Hun Hoe J.C.: This is an appeal against sentence. Appellant was charged with two offences under sections 21(c) and 21(e) of the Forests Ordinance. Both offences were punishable under section 79 of the said Ordinance.

I dismissed the appeal and stated that I would give my reason in writing. This I now do. The offences committed are serious. I am of the opinion that the sentence of 4 weeks was appropriate in view of the large number of trees cut down in an area reserved for research.

Appellant was convicted on the two charges on his own plea. But the learned magistrate did not pass separate sentence on each charge but merely stated that he sentenced appellant to 4 weeks' imprisonment. This is incorrect. It is most important that a separate sentence be passed on each conviction. The magistrate should then indicate whether the sentences were to run concurrently or not. Magistrates must realise that if separate sentences were not passed this court would be faced with difficulty if the appellant successfully appealed against one of the charges.

Another matter should be mentioned. That is where an offence under the Forest Ordinance is punishable under section 79 of the said Ordinance it is advisable to bring the charge before a District Court as it is more likely than not that the pecuniary penalty may exceed the jurisdiction of the Police Court because of the provisions "or ten times the value (as estimated by the Conservator or a person authorised by him in that behalf) of the forest produce in respect of which the offence has been committed, whichever is the greater."

I would therefore revise the sentence. Appellant is sentenced to 4 weeks' imprisonment on each charge. Sentences to run concurrently. Subject to this revision the appeal against sentence was dismissed.

Appeal dismissed.

KONG NYAT MOI v. LEONG SING CHIANG

[O.C.J. (Lee Hun Hoe J.C.) October 28, 1964]

[Sibu — Matrimonial Case No. M/29/64]

Husband and Wife — Divorce — Chinese Customary law — Kheh customary rules — Divorce by consent — Cruelty — Divorce will not be granted as a matter of course.

In this case the petitioner (wife) applied for divorce, alleging cruelty, desertion and failure to maintain. The respondent opposed divorce and denied all the allegations and stated that he wanted the wife to return to him. The evidence established it was the custom among the Kheh community that if both parties agreed to mutual divorce it might be granted.

Held: the petitioner had failed to satisfy the court that she was entitled to divorce on good grounds according to the customary law of her community and therefore the petition must be dismissed.

Cases referred to:—

(1) *Lo Siew Ying* v. *Chong Fay* [1959] S.C.R. 1.

(2) *Thia Whee Kiang* v. *Kueh Eng Seng* [1955] S.C.R. 75.

DIVORCE PETITION.

Parties in person.

Lee Hun Hoe J.C.: The parties were married in 1961 according to Chinese custom at Kanowit. The marriage was registered under the provisions of the Chinese Marriage Ordinance. Both parties belong to the Kheh community. At the time of the marriage the wife was 20 years of age and the husband was a year younger. After the marriage they lived with the respondent's parents. They have no children. Respondent's two married brothers also lived there.

In the petition for divorce she alleged cruelty, desertion and failure to maintain. Respondent opposed divorce and in his answer denied all the allegations. In fact he still wants his wife to return to him.

The court does not grant divorce as a matter of course. The court will only do so if the petitioner can satisfy the court that she can bring her petition within the customary law of the community to which they belong. That is the Kheh or Hakka community.

Unfortunately most of the witnesses were unable to assist the court concerning the Kheh customary rules for divorce. They could only say that if both parties agreed to mutual divorce it might be granted. But here respondent opposed divorce.

Petitioner alleged that some eight months after the marriage respondent beat her up and ordered her to leave the matrimonial house. She further alleged that respondent gave her no money when she was sick and that he refused to take her to see any doctor. She said that some time in the middle of 1962 respondent told her to leave the matrimonial home and so she came to Sibu. Since then she remained in Sibu.